

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

JAMES ETHRIDGE,

*Plaintiff,*

V.

SAMSUNG SDI CO. LTD;  
AMAZON.COM, INC.;  
AMAZON.COM SERVICES, INC.;  
FIREHOUSE VAPORS, LLC;  
MACROMALL LLC; and DOES  
1-50,

*Defendants.*

[illegible]

CIVIL ACTION NO. 3:21-cv-00306

**DEFENDANTS AMAZON.COM, INC.'S AND AMAZON.COM SERVICES, INC.'S**  
**UNOPPOSED MOTION FOR RULING ON PENDING MOTION FOR SUMMARY**  
**JUDGMENT**

Defendants Amazon.com, Inc. and Amazon.com Services, Inc. (collectively, “Amazon”) respectfully move this Honorable Court for a ruling on Amazon’s pending Motion for Summary Judgment. In support thereof, Amazon states as follows:

1. This is a products-liability suit arising out of personal injuries allegedly sustained by Plaintiff James Ethridge (“Plaintiff”) following an explosion of a lithium-ion battery on or about November 22, 2019 in Kemah, Texas.

2. On March 31, 2021, Plaintiff filed suit in the 405th Judicial District Court of Galveston County, Texas seeking damages in excess of \$1,000,000.00. *See* Dkt. No. 1 at Exhibit B-1, Plaintiff's Original Petition. Plaintiff subsequently filed his First Amended Petition on June 30, 2021, also seeking damages in excess of \$1,000,000. *See id.* at Exhibit B-5, Plaintiff's First Amended Petition. After Plaintiff's voluntary dismissal of in-state defendant Firehouse Vapors, LLC established complete diversity amongst all remaining properly joined and served parties,

Amazon timely removed this case to the United States District Court for the Southern District of Texas, Galveston Division on October 28, 2021 pursuant to the provisions of 28 U.S.C. §§ 1332, 1441 and 1446. *See id.* Plaintiff has not moved to remand the case within the time permitted by 28 U.S.C. § 1447(c).

3. As indicated in Amazon's Notice of Removal, Amazon's fully briefed Motion for Summary Judgment remained pending in the 405th Judicial District Court of Galveston County, Texas at the time of removal. *See id.* at ¶ 14. Although "[b]y operation of law, all motions pending in state court at the time of removal remain pending as if they had been filed in federal court," Amazon did not attach its Motion for Summary Judgment to its Notice of Removal because the Motion did not fall into any of the six categories of documents required by Local Rule 81. *Burch v. JPMorgan Chase Bank, N.A.*, 2019 WL 4919018, at \*3 (N.D. Tex. Sept. 3, 2019), *report and recommendation adopted*, 2019 WL 4918100 (N.D. Tex. Oct. 4, 2019).

4. Accordingly, through this Motion, Amazon now submits its fully briefed Motion for Summary Judgment and respectfully moves this Honorable Court for a ruling on that pending Motion. *See Banik v. Tamez*, No. 7:16-CV-00462, 2016 WL 6122729, at \*3 (S.D. Tex. Oct. 20, 2016) ("[I]t is often the case that the Court must deal with motions filed in state court [following removal]. In such cases, the Court must have access to the motions filed in state court."). File-stamped copies of all briefing related to Amazon's Motion for Summary Judgment, as well as a certified copy of the transcript from the oral-hearing on Amazon's Motion for Summary Judgment, are attached as follows:

| Exhibit | Description   |
|---------|---|
| A       | Amazon's Motion for Summary Judgment                              |
| B       | Amazon's Texas Rule of Civil Procedure 166(d) Statement of Intent |

| <b>Exhibit</b> | <b>Description</b>  |
|----------------|---|
| C              | Notice of Oral Hearing on Amazon's Motion for Summary Judgment  |
| D              | Plaintiff's Response in Opposition to Amazon's Motion for Summary Judgment or Alternatively, Request for Leave to Amend |
| E              | Amazon's Reply in Support of its Motion for Summary Judgment  |
| F              | Certified Copy of Transcript from Oral-Hearing on Amazon's Motion for Summary Judgment                                  |

### **CONCLUSION**

Amazon's Motion for Summary Judgment – which was fully-briefed, argued, and remained pending before the 405th Judicial District Court of Galveston County, Texas at the time of removal – is ripe for adjudication. Accordingly, Amazon respectfully requests that this Honorable Court issue a ruling on Amazon's Motion for Summary Judgment and for all other relief to which Amazon may be justly entitled.

Respectfully submitted,

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Clifford L. Harrison

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**ATTORNEYS FOR DEFENDANTS  
AMAZON.COM, INC. AND AMAZON.COM  
SERVICES, INC.**

**CERTIFICATE OF CONFERENCE**

In accordance with the FEDERAL RULES OF CIVIL PROCEDURE, I hereby certify that on December 3, 2021 the undersigned counsel conferred with counsel for Plaintiff James Ethridge via e-mail regarding the relief sought in this motion. Counsel for Plaintiff indicated that Plaintiff does not oppose the relief sought herein.

/s/ Heriberto R. Montalvo

Heriberto R. Montalvo

**CERTIFICATE OF SERVICE**

In accordance with the FEDERAL RULES OF CIVIL PROCEDURE, I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record on this 3rd day of December 2021, by electronic e-service.

/s/ Clifford L. Harrison  
Clifford L. Harrison